

111TH CONGRESS
1ST SESSION

S. 1466

To establish the position of Deputy United States Trade Representative for Trade Enforcement and a Trade Enforcement Division in the Office of the United States Trade Representative, to establish a Chief Manufacturing Negotiator in the Office of the United States Trade Representative, to strengthen enforcement of United States intellectual property rights at United States borders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 16, 2009

Ms. STABENOW (for herself, Mr. GRAHAM, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish the position of Deputy United States Trade Representative for Trade Enforcement and a Trade Enforcement Division in the Office of the United States Trade Representative, to establish a Chief Manufacturing Negotiator in the Office of the United States Trade Representative, to strengthen enforcement of United States intellectual property rights at United States borders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Trade Enforcement Act of 2009”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—STRENGTHENING TRADE ENFORCEMENT BY THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

Sec. 101. Establishment of Trade Enforcement Division and Deputy United
States Trade Representative for Trade Enforcement.

Sec. 102. Identification of trade enforcement priorities.

Sec. 103. Establishment of Chief Manufacturing Negotiator.

Sec. 104. Plan for addressing nontariff barriers to market access.

**TITLE II—STRENGTHENING ENFORCEMENT OF INTELLECTUAL
PROPERTY RIGHTS**

Subtitle A—Definitions

Sec. 201. Definitions.

Subtitle B—Coordination of Enforcement of Intellectual Property Rights

Sec. 211. Director of Intellectual Property Rights Enforcement.

Sec. 212. Strategic plan for the enforcement of intellectual property rights.

Sec. 213. U.S. Customs and Border Protection and U.S. Immigration and Cus-
toms Enforcement intellectual property rights coordinators.

**Subtitle C—Regulatory and Policy Improvements With Respect to Combating
Counterfeiting and Piracy**

Sec. 221. Identification of certain unlawful goods.

Sec. 222. Training in new technologies.

Sec. 223. Disclosure of information and samples of shipments to intellectual
property owners.

Sec. 224. Improvements to recordation process.

Sec. 225. Identification of low-risk importers.

Sec. 226. “Watch List” database.

Sec. 227. Civil fines for importation of pirated or counterfeit goods.

Sec. 228. Report on effective collection techniques.

Subtitle D—Training Enhancements

Sec. 231. International training and technical assistance enhancements.

Subtitle E—New Legal Tools for Border Enforcement

Sec. 241. Expanded prohibitions on importation, exportation, and trans-
shipment of counterfeit or pirated goods.

Sec. 242. Declarations regarding counterfeit and infringing merchandise.

Sec. 243. Seizure and forfeiture of devices designed to circumvent intellectual property rights protections.

Sec. 244. Authority of Chief Counsel of U.S. Customs and Border Protection to represent the United States in certain forfeiture proceedings.

Subtitle F—Administrative Provisions

Sec. 251. Advisory Committee on Import Safety and Intellectual Property Enforcement.

Sec. 252. Staffing enhancements at U.S. Customs and Border Protection.

Sec. 253. Staffing enhancements at U.S. Immigration and Customs Enforcement.

Sec. 254. Regulatory authority.

1 **TITLE I—STRENGTHENING**
 2 **TRADE ENFORCEMENT BY**
 3 **THE OFFICE OF THE UNITED**
 4 **STATES TRADE REPRESENTA-**
 5 **TIVE**

6 **SEC. 101. ESTABLISHMENT OF TRADE ENFORCEMENT DIVI-**
 7 **SION AND DEPUTY UNITED STATES TRADE**
 8 **REPRESENTATIVE FOR TRADE ENFORCE-**
 9 **MENT.**

10 (a) ESTABLISHMENT.—Chapter 4 of title I of the
 11 Trade Act of 1974 (19 U.S.C. 2171) is amended by add-
 12 ing at the end the following:

13 **“SEC. 142. TRADE ENFORCEMENT DIVISION AND DEPUTY**
 14 **UNITED STATES TRADE REPRESENTATIVE**
 15 **FOR TRADE ENFORCEMENT.**

16 “(a) ESTABLISHMENT OF TRADE ENFORCEMENT DI-
 17 VISION.—There is established within the Office of the
 18 United States Trade Representative a Trade Enforcement
 19 Division (in this section referred to as the ‘Division’).

1 “(b) ESTABLISHMENT OF POSITION OF DEPUTY
2 UNITED STATES TRADE REPRESENTATIVE FOR TRADE
3 ENFORCEMENT.—

4 “(1) IN GENERAL.—The Division shall be head-
5 ed by a Deputy United States Trade Representative
6 for Trade Enforcement.

7 “(2) APPOINTMENT AND NOMINATION.—The
8 Deputy United States Trade Representative for
9 Trade Enforcement shall be appointed by the Presi-
10 dent, by and with the advice and consent of the Sen-
11 ate. As an exercise of the rulemaking power of the
12 Senate, any nomination of the Deputy United States
13 Trade Representative for Trade Enforcement sub-
14 mitted to the Senate for its advice and consent, and
15 referred to a committee, shall be referred to the
16 Committee on Finance.

17 “(3) RANK.—The Deputy United States Trade
18 Representative for Trade Enforcement shall hold of-
19 fice at the pleasure of the President and shall have
20 the rank of Ambassador.

21 “(c) FUNCTIONS OF DEPUTY UNITED STATES
22 TRADE REPRESENTATIVE FOR TRADE ENFORCEMENT.—

23 “(1) PRINCIPAL FUNCTION.—The principal
24 function of the Deputy United States Trade Rep-
25 resentative for Trade Enforcement shall be to ensure

1 that United States trading partners comply with
2 trade agreements to which the United States is a
3 party.

4 “(2) ADDITIONAL FUNCTIONS.—The Deputy
5 United States Trade Representative for Trade En-
6 forcement shall—

7 “(A) assist the United States Trade Rep-
8 resentative in investigating and prosecuting dis-
9 putes before the World Trade Organization and
10 pursuant to other bilateral or regional trade
11 agreements to which the United States is a
12 party;

13 “(B) assist the United States Trade Rep-
14 resentative in carrying out the United States
15 Trade Representative’s functions under section
16 141(d);

17 “(C) make recommendations with respect
18 to the administration of United States trade
19 laws relating to barriers imposed by foreign
20 governments to the importation of United
21 States goods, services, and intellectual property,
22 and other trade matters; and

23 “(D) perform such other functions as the
24 United States Trade Representative may direct.

1 “(d) OFFICE OF TRADE ASSISTANCE FOR SMALL
2 BUSINESSES.—

3 “(1) ESTABLISHMENT.—There is established
4 within the Division the Office of Trade Assistance
5 for Small Businesses.

6 “(2) FUNCTIONS.—The Office of Trade Assist-
7 ance for Small Businesses shall provide technical
8 and legal assistance and advice to eligible small busi-
9 nesses to enable such small businesses to prepare
10 and file petitions (other than those that, in the opin-
11 ion of the Office, are frivolous) under section 302.

12 “(3) ELIGIBLE SMALL BUSINESS DEFINED.—
13 The term ‘eligible small business’ means any busi-
14 ness concern that, in the judgment of the Office of
15 Trade Assistance for Small Businesses, due to its
16 size, has neither adequate internal resources nor fi-
17 nancial ability to obtain qualified outside assistance
18 in preparing and filing petitions and complaints
19 under section 302. In determining whether a busi-
20 ness concern is an ‘eligible small business’, the Of-
21 fice of Trade Assistance for Small Businesses may
22 consult with the Administrator of the Small Busi-
23 ness Administration and the heads of other appro-
24 priate Federal departments and agencies.”.

1 (b) CONFORMING AMENDMENT.—The table of con-
 2 tents for the Trade Act of 1974 is amended by inserting
 3 after the item relating to section 141 the following:

“Sec. 142. Trade Enforcement Division and Deputy United States Trade Rep-
 resentative for Trade Enforcement.”.

4 (c) COMPENSATION FOR DEPUTY UNITED STATES
 5 TRADE REPRESENTATIVE FOR TRADE ENFORCEMENT.—
 6 Section 5314 of title 5, United States Code, is amended
 7 by striking “Deputy United States Trade Representatives
 8 (3).” and inserting “Deputy United States Trade Rep-
 9 resentatives (4).”.

10 (d) CONFORMING REPEAL.—Section 2112 of the Bi-
 11 partisan Trade Promotion Authority Act of 2002 (19
 12 U.S.C. 3812) is repealed.

13 **SEC. 102. IDENTIFICATION OF TRADE ENFORCEMENT PRI-**
 14 **ORITIES.**

15 (a) IN GENERAL.—Title III of the Trade Act of 1974
 16 (19 U.S.C. 2411 et seq.) is amended by adding at the end
 17 the following:

18 **“SEC. 311. IDENTIFICATION OF TRADE ENFORCEMENT PRI-**
 19 **ORITIES.**

20 “(a) IDENTIFICATION AND ANNUAL REPORT.—

21 “(1) IN GENERAL.—Not later than 75 days
 22 after the submission of the report required by sec-
 23 tion 181(b), the Trade Representative shall annu-
 24 ally—

1 “(A) identify United States trade enforce-
2 ment priorities;

3 “(B) identify enforcement actions that the
4 Trade Representative has taken during the pre-
5 vious year and review the impact such enforce-
6 ment actions have had on trade barriers in for-
7 eign countries;

8 “(C) identify trade practices of foreign
9 countries on which the Trade Representative
10 will focus enforcement efforts (in this section
11 referred to as ‘priority foreign country trade
12 practices’);

13 “(D) submit to the Committee on Finance
14 of the Senate and the Committee on Ways and
15 Means of the House of Representatives a report
16 on the priorities, actions, and practices identi-
17 fied in subparagraphs (A), (B), and (C); and

18 “(E) publish the report required by sub-
19 paragraph (D) in the Federal Register.

20 “(2) FACTORS TO CONSIDER.—In identifying
21 priority foreign country trade practices under para-
22 graph (1)(C), the Trade Representative shall focus
23 on the practices the elimination of which the Trade
24 Representative determines will have the most poten-
25 tial to increase United States economic growth, ei-

1 ther directly or through the establishment of a bene-
2 ficial precedent. The Trade Representative shall take
3 into account all relevant factors, including—

4 “(A) the major barriers and trade dis-
5 torting practices described in the most recent
6 available report submitted under section 181(b),
7 including any practices identified pursuant to a
8 review of a trade agreement conducted under
9 section 1377 of the Omnibus Trade and Com-
10 petitiveness Act of 1988 (19 U.S.C. 3106);

11 “(B) the findings and practices described
12 in the most recent available report required
13 under—

14 “(i) section 182;

15 “(ii) section 3005 of the Omnibus
16 Trade and Competitiveness Act of 1988
17 (22 U.S.C. 5305);

18 “(iii) section 421 of the U.S.-China
19 Relations Act of 2000 (22 U.S.C. 6951);
20 and

21 “(iv) any other report relating to
22 international trade and investment pre-
23 pared by the Trade Representative or any
24 other agency;

1 “(C) the trade agreements to which a for-
2 eign country is a party and the compliance of
3 the foreign country with such agreements;

4 “(D) the medium- and long-term implica-
5 tions of the procurement plans of foreign gov-
6 ernments; and

7 “(E) the international competitive position
8 and export potential of United States products
9 and services.

10 “(3) OTHER ITEMS IN REPORT.—The Trade
11 Representative may include in the report required by
12 paragraph (1)(D) a description of foreign country
13 trade practices that may in the future warrant iden-
14 tification as priority foreign country trade practices.

15 “(b) CONSULTATION.—

16 “(1) IN GENERAL.—Not later than 45 days
17 after the submission of the report required by sec-
18 tion 181(b), the Trade Representative shall consult
19 with the Committee on Finance of the Senate and
20 the Committee on Ways and Means of the House of
21 Representatives with respect to the priorities, ac-
22 tions, and practices to be identified in the report re-
23 quired by subsection (a)(1)(D).

24 “(2) VOTE OF COMMITTEE.—If, as a result of
25 the consultations described in paragraph (1), either

1 the Committee on Finance of the Senate or the
 2 Committee on Ways and Means of the House of
 3 Representatives requests by majority vote that a
 4 trade practice of a foreign country be identified as
 5 a priority foreign country trade practice, the Trade
 6 Representative shall include such identification in
 7 the report required by subsection (a)(1)(D).

8 “(3) DETERMINATION NOT TO INCLUDE PRI-
 9 ORITY FOREIGN COUNTRY TRADE PRACTICES.—The
 10 Trade Representative may determine not to include
 11 the identification of a priority foreign country trade
 12 practice requested under paragraph (2) in the report
 13 required by subsection (a)(1)(D) only if—

14 “(A) the Trade Representative finds
 15 that—

16 “(i) the practice is already being ad-
 17 dressed—

18 “(I) under provisions of United
 19 States trade law;

20 “(II) under the Uruguay Round
 21 Agreements (as defined in section
 22 2(7) of the Uruguay Round Agree-
 23 ments Act (19 U.S.C. 3501(7)));

24 “(III) under any bilateral or re-
 25 gional trade agreement; or

1 “(IV) as part of trade negotia-
 2 tions with the foreign country or other
 3 countries engaging in the practice;
 4 and

5 “(ii) progress is being made toward
 6 the elimination of the practice; or

7 “(B) the Trade Representative finds that
 8 identification of the practice as a priority for-
 9 eign country trade practice would be contrary
 10 to the interests of the United States.

11 “(4) REASONS FOR DETERMINATION.—In the
 12 case of a determination made pursuant to paragraph
 13 (3), the Trade Representative shall set forth in de-
 14 tail the reasons for that determination in the report
 15 required by subsection (a)(1)(D).

16 “(c) INVESTIGATION AND RESOLUTION.—

17 “(1) IN GENERAL.—Upon submission of the re-
 18 port required by subsection (a)(1)(D), the Trade
 19 Representative shall, with respect to any priority for-
 20 eign country trade practice identified, seek satisfac-
 21 tory resolution with the foreign country or countries
 22 engaging in the practice pursuant to paragraph (2).
 23 A satisfactory resolution may include the elimination
 24 of the practice or, if elimination of the practice is

1 not feasible, the provision of compensatory trade
2 benefits.

3 “(2) CONSULTATIONS; INVESTIGATIONS.—Not
4 later than 120 days after the submission of the re-
5 port required by subsection (a)(1)(D), the Trade
6 Representative shall, with respect to any priority for-
7 eign country trade practice identified in the report—

8 “(A) initiate dispute settlement consulta-
9 tions in the World Trade Organization;

10 “(B) initiate dispute settlement consulta-
11 tions under the applicable provisions of any bi-
12 lateral or regional trade agreement to which the
13 United States is a party;

14 “(C) initiate an investigation under section
15 302(b);

16 “(D) seek to negotiate an agreement that
17 provides for the elimination of the priority for-
18 eign country trade practice or, if elimination of
19 the practice is not feasible, an agreement that
20 provides for compensatory trade benefits; or

21 “(E) take any other action necessary to
22 eliminate the priority foreign country trade
23 practice.

24 “(3) REPORT.—On the day on which the Trade
25 Representative takes action under subparagraph (E)

1 of paragraph (2), the Trade Representative shall
2 submit to Congress a report—

3 “(A) describing the action taken under
4 such subparagraph and the reasons for taking
5 the action; and

6 “(B) stating in detail the reasons the
7 Trade Representative did not take action under
8 subparagraphs (A) through (D) of paragraph
9 (2).

10 “(d) ADDITIONAL REPORTING.—Not later than 6
11 months after the date of the enactment of this Act, and
12 every 6 months thereafter, the Trade Representative shall
13 report to the Committee on Finance of the Senate and
14 the Committee on Ways and Means of the House of Rep-
15 resentatives on—

16 “(1) the progress being made to achieve the
17 trade enforcement priorities identified in subsection
18 (a)(1)(A); and

19 “(2) the steps being taken to address the pri-
20 ority foreign country trade practices identified in
21 subsection (a)(1)(C).”.

22 (b) CONFORMING AMENDMENT.—The table of con-
23 tents of the Trade Act of 1974 is amended by inserting
24 after the item relating to section 310 the following:

“Sec. 311. Identification of trade enforcement priorities.”.

1 **SEC. 103. ESTABLISHMENT OF CHIEF MANUFACTURING NE-**
2 **GOTIATOR.**

3 (a) ESTABLISHMENT OF POSITION.—Section
4 141(b)(2) of the Trade Act of 1974 (19 U.S.C.
5 2171(b)(2)) is amended to read as follows:

6 “(2) There shall be in the Office 3 Deputy United
7 States Trade Representatives, 1 Chief Agricultural Nego-
8 tiator, and 1 Chief Manufacturing Negotiator who shall
9 all be appointed by the President, by and with the advice
10 and consent of the Senate. As an exercise of the rule-
11 making power of the Senate, any nomination of a Deputy
12 United States Trade Representative, the Chief Agricul-
13 tural Negotiator, or the Chief Manufacturing Negotiator
14 submitted to the Senate for its advice and consent, and
15 referred to a committee, shall be referred to the Com-
16 mittee on Finance. Each Deputy United States Trade
17 Representative, the Chief Agricultural Negotiator, and the
18 Chief Manufacturing Negotiator shall hold office at the
19 pleasure of the President and shall have the rank of Am-
20 bassador.”.

21 (b) FUNCTIONS OF POSITION.—Section 141(c) of the
22 Trade Act of 1974 (19 U.S.C. 2171(c)) is amended—

23 (1) by moving paragraph (5) 2 ems to the left;

24 and

25 (2) by adding at the end the following new
26 paragraph:

1 “(6)(A) The principal function of the Chief Manufac-
 2 turing Negotiator shall be to conduct trade negotiations
 3 and to enforce trade agreements relating to United States
 4 manufacturing products and services. The Chief Manufac-
 5 turing Negotiator shall be a vigorous advocate on behalf
 6 of United States manufacturing interests and shall per-
 7 form such other functions as the United States Trade
 8 Representative may direct.

9 “(B) Not later than 1 year after the date of the en-
 10 actment of this paragraph, and annually thereafter, the
 11 Chief Manufacturing Negotiator shall submit to the Com-
 12 mittee on Finance of the Senate and the Committee on
 13 Ways and Means of the House of Representatives a report
 14 on the actions taken by the Chief Manufacturing Nego-
 15 tiator in the preceding year.”.

16 (c) COMPENSATION.—Section 5314 of title 5, United
 17 States Code, as amended by section 101(c), is further
 18 amended by inserting “Chief Manufacturing Negotiator.”
 19 after “Chief Agricultural Negotiator.”.

20 (d) TECHNICAL AMENDMENTS.—Section 141(e) of
 21 the Trade Act of 1974 (19 U.S.C. 2171(e)) is amended—

22 (1) in paragraph (1), by striking “5314” and
 23 inserting “5315”; and

24 (2) in paragraph (2), by striking “the max-
 25 imum rate of pay for grade GS–18, as provided in

1 section 5332” and inserting “the maximum rate of
 2 pay for level IV of the Executive Schedule in section
 3 5315”.

4 **SEC. 104. PLAN FOR ADDRESSING NONTARIFF BARRIERS**
 5 **TO MARKET ACCESS.**

6 Not later than 180 days after the date of the enact-
 7 ment of this Act, the Deputy United States Trade Rep-
 8 resentative for Trade Enforcement shall submit to the
 9 Committee on Commerce, Science, and Transportation
 10 and the Committee on Finance of the Senate and the
 11 Committee on Energy and Commerce and the Committee
 12 on Ways and Means of the House of Representatives a
 13 plan for addressing nontariff barriers affecting market ac-
 14 cess for United States companies in any country with re-
 15 spect to which the United States has entered into a bilat-
 16 eral or regional trade agreement or is negotiating such an
 17 agreement.

18 **TITLE II—STRENGTHENING EN-**
 19 **FORCEMENT OF INTELLEC-**
 20 **TUAL PROPERTY RIGHTS**
 21 **Subtitle A—Definitions**

22 **SEC. 201. DEFINITIONS.**

23 In this title:

24 (1) **ADVISORY COMMITTEE.**—The term “Advi-
 25 sory Committee” means the Advisory Committee on

1 Import Safety and Intellectual Property Rights En-
2 forcement established pursuant to section 251.

3 (2) COMMISSIONER.—The term “Commis-
4 sioner” means the Commissioner responsible for
5 U.S. Customs and Border Protection.

6 (3) COUNTERFEITING; COUNTERFEIT GOODS.—

7 (A) COUNTERFEITING.—The term “coun-
8 terfeiting” means activities related to produc-
9 tion of or trafficking in goods, including pack-
10 aging, that bear a spurious mark or designation
11 that is identical to or substantially indistin-
12 guishable from a mark or designation protected
13 under the trademark laws or related laws.

14 (B) COUNTERFEIT GOODS.—The term
15 “counterfeit goods” means goods described in
16 subparagraph (A).

17 (4) DIRECTOR.—The term “Director” means
18 the Director of Intellectual Property Rights Enforce-
19 ment of the Department of the Treasury established
20 under section 211.

21 (5) ENFORCEMENT OF INTELLECTUAL PROP-
22 ERTY RIGHTS.—The term “enforcement of intellec-
23 tual property rights” means activities to enforce—

24 (A) copyrights, patents, trademarks, and
25 other forms of intellectual property, including

activities to control counterfeiting and piracy;
and

(B) exclusion orders issued by the United States International Trade Commission by reason of any of subparagraphs (B) through (E) of subsection (a)(1) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(a)(1) (B) through (E)).

(6) EXCLUSION ORDER.—The term “exclusion order” means an order of the United States International Trade Commission issued under section 337 (d) or (e) of the Tariff Act of 1930 (19 U.S.C. 1337 (d) and (e)) to exclude goods from entry into the United States.

(7) PIRACY; PIRATED GOODS.—

(A) PIRACY.—The term “piracy” means activities related to production of or trafficking in unauthorized copies or phonorecords of works protected under title 17, United States Code, or related laws.

(B) PIRATED GOODS.—The term “pirated goods” means copies or phonorecords described in subparagraph (A).

1 (8) SECRETARY.—Except as otherwise provided,
2 the term “Secretary” means the Secretary of the
3 Treasury.

4 (9) TRANSSHIPMENT.—The term “trans-
5 shipment” means the shipment of goods through one
6 country that is an intermediate destination to an-
7 other country that is the final destination of the
8 goods.

9 **Subtitle B—Coordination of En-**
10 **forcement of Intellectual Prop-**
11 **erty Rights**

12 **SEC. 211. DIRECTOR OF INTELLECTUAL PROPERTY RIGHTS**
13 **ENFORCEMENT.**

14 (a) ESTABLISHMENT.—There is established within
15 the Department of the Treasury the position of Director
16 of Intellectual Property Rights Enforcement.

17 (b) APPOINTMENT.—The Director shall be appointed
18 by the Secretary, and shall be responsible to and shall re-
19 port directly to the Deputy Secretary of the Treasury.

20 (c) DUTIES.—The Director shall—

21 (1) coordinate all activities of the Department
22 of the Treasury involving the enforcement of intel-
23 lectual property rights and coordinate with U.S.
24 Customs and Border Protection and U.S. Immigra-

1 tion and Customs Enforcement with respect to such
2 enforcement;

3 (2) oversee the development and implementa-
4 tion of the strategic plan for the enforcement of in-
5 tellectual property rights required under section 212;

6 (3) coordinate the policy and regulatory
7 changes set forth in this title;

8 (4) serve as staff representative of the Depart-
9 ment of the Treasury in interagency bodies with re-
10 sponsibility for coordination of activities involving
11 the enforcement of intellectual property rights;

12 (5) conduct an evaluation of the effectiveness of
13 the organizational structure of U.S. Customs and
14 Border Protection for reducing the entry into the
15 United States of counterfeit or pirated goods, goods
16 in violation of exclusion orders, and other goods in
17 violation of other intellectual property rights; and

18 (6) carry out other duties, as assigned by the
19 Secretary or Deputy Secretary of the Treasury, to
20 improve the effectiveness of the efforts of the De-
21 partment of the Treasury under the laws within its
22 jurisdiction with respect to the enforcement of intel-
23 lectual property rights.

1 **SEC. 212. STRATEGIC PLAN FOR THE ENFORCEMENT OF IN-**
2 **TELLECTUAL PROPERTY RIGHTS.**

3 (a) IN GENERAL.—The Director shall develop, for
4 approval by the Deputy Secretary of the Treasury, an an-
5 nual strategic plan for the enforcement of intellectual
6 property rights.

7 (b) CONSULTATION.—In developing the annual stra-
8 tegic plan required under subsection (a), the Director shall
9 consult with—

10 (1) the Advisory Committee;

11 (2) the U.S. Customs and Border Protection
12 Intellectual Property Rights Coordinator and the
13 U.S. Immigration and Customs Enforcement Intel-
14 lectual Property Rights Coordinator appointed under
15 section 213;

16 (3) all entities within the Department of the
17 Treasury with expertise and experience in the en-
18 forcement of intellectual property rights;

19 (4) other agencies of the executive branch en-
20 gaged in the enforcement of intellectual property
21 rights, including any officials designated to coordi-
22 nate such enforcement efforts on an interagency
23 basis; and

24 (5) officials from foreign law enforcement agen-
25 cies and international organizations, including the
26 World Customs Organization, with experience and

1 expertise in border control measures relating to the
2 enforcement of intellectual property rights.

3 (c) CONTENTS OF PLAN.—The annual strategic plan
4 shall set forth objectives, goals, and strategies for more
5 effective use of the authorities of U.S. Customs and Bor-
6 der Protection and U.S. Immigration and Customs En-
7 forcement relating to the enforcement of intellectual prop-
8 erty rights, and shall—

9 (1) provide for specific measurement of the cur-
10 rent effectiveness of enforcement tools, including
11 targeting, examination, post-entry auditing, and pen-
12 alty actions;

13 (2) give priority to those enforcement tools de-
14 termined under paragraph (1) to be most effective;

15 (3) identify best practices, both in the United
16 States and abroad, with respect to the enforcement
17 of intellectual property rights, taking into account
18 the practices of enforcement authorities of other
19 countries, and implement those practices;

20 (4) identify and apply the specific performance
21 measures to be used to evaluate the progress of U.S.
22 Customs and Border Protection and U.S. Immigra-
23 tion and Customs Enforcement in improving the ef-
24 fectiveness of efforts relating to the enforcement of
25 intellectual property rights;

1 (5) address border control programs adminis-
2 tered by U.S. Customs and Border Protection and
3 U.S. Immigration and Customs Enforcement at
4 ports of entry for passengers and freight, and at
5 points of entry for postal and courier services, as
6 well as for goods being transshipped through United
7 States ports and in the process of being exported
8 from the United States;

9 (6) require cooperation between U.S. Customs
10 and Border Protection and U.S. Immigration and
11 Customs Enforcement and State and local law en-
12 forcement agencies with respect to the enforcement
13 of intellectual property rights and sharing informa-
14 tion with respect to detained shipments of goods
15 suspected of violating intellectual property rights at
16 ports of entry;

17 (7) recommend the optimal feasible allocation of
18 human, financial, physical, and technological re-
19 sources that U.S. Customs and Border Protection
20 and U.S. Immigration and Customs Enforcement
21 should use to achieve the goals of the annual stra-
22 tegic plan;

23 (8) report on the key activities of U.S. Customs
24 and Border Protection and U.S. Immigration and
25 Customs Enforcement during the preceding year

1 with respect to the enforcement of intellectual prop-
2 erty rights; and

3 (9) contain such other information as the Di-
4 rector considers appropriate to convey what U.S.
5 Customs and Border Protection and U.S. Immigra-
6 tion and Customs Enforcement will do, over the fol-
7 lowing year, with respect to the enforcement of intel-
8 lectual property rights and reducing the costs that
9 violations of intellectual property rights impose on
10 the United States economy and public safety.

11 (d) APPROVAL OF PLAN BY DEPUTY SECRETARY OF
12 THE TREASURY.—The Director shall submit the annual
13 strategic plan to the Deputy Secretary of the Treasury
14 for approval, who shall ensure that the plan is consistent
15 with any other relevant interagency strategic plans.

16 (e) SUBMISSION TO CONGRESS.—After approving the
17 annual strategic plan under subsection (d), the Deputy
18 Secretary of the Treasury shall transmit the annual stra-
19 tegic plan to the Committee on Finance of the Senate and
20 the Committee on Ways and Means of the House of Rep-
21 resentatives, along with any recommendations of the De-
22 partment of the Treasury for statutory changes or funding
23 authorizations needed to improve the effectiveness of the
24 Department's efforts with respect to the enforcement of
25 intellectual property rights.

1 (f) TIMING.—The Deputy Secretary of the Treasury
 2 shall submit the annual strategic plan under subsection
 3 (d) not later than 180 days after the date of the enact-
 4 ment of this Act and annually thereafter.

5 **SEC. 213. U.S. CUSTOMS AND BORDER PROTECTION AND**
 6 **U.S. IMMIGRATION AND CUSTOMS ENFORCE-**
 7 **MENT INTELLECTUAL PROPERTY RIGHTS CO-**
 8 **ORDINATORS.**

9 (a) U.S. CUSTOMS AND BORDER PROTECTION IN-
 10 TELLECTUAL PROPERTY RIGHTS COORDINATOR.—

11 (1) APPOINTMENT.—The Commissioner shall
 12 appoint a U.S. Customs and Border Protection coor-
 13 dinator of intellectual property rights enforcement
 14 activities (in this subtitle referred to as the “U.S.
 15 Customs and Border Protection Intellectual Prop-
 16 erty Rights Coordinator”), who shall report directly
 17 to the Commissioner.

18 (2) DUTIES.—The U.S. Customs and Border
 19 Protection Intellectual Property Rights Coordinator
 20 shall—

21 (A) assist the Director of Intellectual
 22 Property Rights Enforcement of the Depart-
 23 ment of the Treasury in the development of the
 24 annual strategic plan and coordinate the imple-

1 mentation of those aspects of the plan that in-
 2 volve U.S. Customs and Border Protection;

3 (B) coordinate all efforts, at all ports of
 4 entry and elsewhere, carried out by U.S. Cus-
 5 toms and Border Protection with respect to the
 6 enforcement of intellectual property rights, in-
 7 cluding training and staffing;

8 (C) supervise the implementation of those
 9 aspects of the regulatory and policy reforms set
 10 out in this title that involve U.S. Customs and
 11 Border Protection and submit a report on such
 12 activities to the Director to be included in the
 13 annual strategic plan required under section
 14 212; and

15 (D) carry out such other duties, as as-
 16 signed by the Commissioner, the purpose of
 17 which are to improve the performance of U.S.
 18 Customs and Border Protection with respect to
 19 the enforcement of intellectual property rights.

20 (b) U.S. IMMIGRATION AND CUSTOMS ENFORCE-
 21 MENT INTELLECTUAL PROPERTY RIGHTS COORDI-
 22 NATOR.—

23 (1) APPOINTMENT.—The Assistant Secretary
 24 for United States Immigration and Customs En-
 25 forcement shall appoint an U.S. Immigration and

1 Customs Enforcement coordinator of intellectual
2 property enforcement activities (in this subtitle re-
3 ferred to as the “U.S. Immigration and Customs
4 Enforcement Intellectual Property Rights Coordi-
5 nator”), who shall report directly to the Assistant
6 Secretary for U.S. Immigration and Customs En-
7 forcement.

8 (2) DUTIES.—The U.S. Immigration and Cus-
9 toms Enforcement Intellectual Property Rights Co-
10 ordinator shall—

11 (A) assist the Director of Intellectual
12 Property Rights Enforcement of the Depart-
13 ment of the Treasury in the development of the
14 annual strategic plan and coordinate the imple-
15 mentation of those aspects of the plan that in-
16 volve U.S. Immigration and Customs Enforce-
17 ment;

18 (B) coordinate all efforts carried out by
19 U.S. Immigration and Customs Enforcement
20 with respect to the enforcement of intellectual
21 property rights, including training and staffing;

22 (C) supervise the implementation of those
23 aspects of the regulatory and policy reforms set
24 out in this title that involve U.S. Immigration
25 and Customs Enforcement; and

(D) carry out such other duties, as assigned by the Assistant Secretary for U.S. Immigration and Customs Enforcement, the purpose which are to improve the performance of U.S. Immigration and Customs Enforcement with respect to the enforcement of intellectual property rights.

**Subtitle C—Regulatory and Policy
Improvements With Respect to
Combating Counterfeiting and
Piracy**

SEC. 221. IDENTIFICATION OF CERTAIN UNLAWFUL GOODS.

(a) IN GENERAL.—The Secretary, acting through the Commissioner, shall prescribe regulations to apply risk assessment modeling techniques to border enforcement activities with respect to combating counterfeiting and piracy. Such efforts shall include—

(1) preparing a report on and evaluation of the pilot project of U.S. Customs and Border Protection with respect to shipments of counterfeit or pirated products;

(2) expanding the pilot project to allow for the use of the Automated Targeting System in risk assessment modeling; and

1 (3) developing a plan for the development, test-
2 ing, evaluation, and continuous improvement of risk
3 assessment modeling techniques to facilitate the en-
4 forcement of intellectual property rights.

5 (b) INCLUSION IN STRATEGIC PLAN.—The report de-
6 scribed in subsection (a)(1), and the plan described in sub-
7 section (a)(3), shall be included in the annual strategic
8 plan that is required under section 212.

9 **SEC. 222. TRAINING IN NEW TECHNOLOGIES.**

10 (a) TRAINING OF PERSONNEL.—The Commissioner
11 shall consult with the Advisory Committee to determine
12 the feasibility of training U.S. Customs and Border Pro-
13 tection personnel in the use of new technological means
14 for detecting and identifying, at ports of entry, counterfeit
15 and pirated goods, and goods that are subject to exclusion
16 orders, whether for entry into the United States or for
17 transshipment to other destinations.

18 (b) IDENTIFICATION OF TECHNOLOGIES AND
19 SOURCES OF TRAINING.—In consultation with the Advi-
20 sory Committee, the Commissioner shall identify—

21 (1) cost-effective technologies for detecting and
22 identifying goods described in subsection (a) at ports
23 of entry; and

1 (2) economical sources for training U.S. Cus-
 2 toms and Border Protection personnel in the use of
 3 such technologies.

4 (c) REGULATORY AND POLICY CHANGES.—The
 5 Comptroller General of the United States shall submit to
 6 Congress a report analyzing the costs and benefits of mak-
 7 ing regulatory and policy changes to enable the receipt of
 8 donations of hardware, software, equipment, and similar
 9 technologies, and the acceptance of training and other
 10 support services, from the private sector, to facilitate the
 11 training of personnel of U.S. Customs and Border Protec-
 12 tion under subsection (a).

13 **SEC. 223. DISCLOSURE OF INFORMATION AND SAMPLES OF**
 14 **SHIPMENTS TO INTELLECTUAL PROPERTY**
 15 **OWNERS.**

16 The Commissioner shall prescribe regulations to—

17 (1) improve the process of making samples of
 18 shipments of goods suspected of violating intellectual
 19 property rights available to the owners of copyrights,
 20 trademarks, patents, and other forms of intellectual
 21 property, in an efficient and cost-effective manner,
 22 for the purpose of inspection or analysis, including
 23 by developing a process under which—

1 (A) a requirement that such an owner post
2 a bond to receive such a sample may be waived
3 if the value of the sample is less than \$100; or

4 (B) such an owner may elect to obtain a
5 continuous bond with respect to such samples;
6 and

7 (2) increase disclosure to owners of copyrights,
8 trademarks, patents, and other forms of intellectual
9 property of information about shipments of goods
10 that have been detained at ports of entry on sus-
11 picion that the importation into, or transshipment
12 through, the United States of those goods would vio-
13 late the intellectual property rights of such owners,
14 including—

15 (A) providing a detailed description of the
16 goods, including information on the packaging
17 of the goods such as expiration dates and
18 model, lot, batch, part, or serial numbers or
19 universal product codes (UPC);

20 (B) providing photographs of the goods
21 that do not mask identifying information about
22 the goods;

23 (C) disclosing the identities and contact in-
24 formation of all parties involved in the ship-
25 ments, including importers, exporters, declar-

1 ants, consignees, freight forwarders, and ware-
2 house owners;

3 (D) identifying points of origin and des-
4 tination of the shipments; and

5 (E) providing any other documents relat-
6 ing to the shipments.

7 **SEC. 224. IMPROVEMENTS TO RECORDATION PROCESS.**

8 (a) IMPROVEMENTS IN RECORDATION PROCESS.—

9 The Commissioner shall prescribe regulations to ensure
10 that the system for recordation of copyrights, trademarks,
11 patents, and other forms of intellectual property that may
12 be subject to recordation, does not impede the rapid sei-
13 zure of goods that violate the rights of the owners of such
14 copyrights, trademarks, patents, and other forms of intel-
15 lectual property.

16 (b) SIMULTANEOUS RECORDATION.—

17 (1) IN GENERAL.—In consultation with the
18 Under Secretary of Commerce for Intellectual Prop-
19 erty and Director of the United States Patent and
20 Trademark Office, and the Register of Copyrights,
21 the Commissioner shall develop a system pursuant to
22 which—

23 (A) trademarks may be recorded with U.S.
24 Customs and Border Protection simultaneously

1 with the issuance of trademark registration;
2 and

3 (B) copyrights of audiovisual works and
4 sound recordings may be recorded with U.S.
5 Customs and Border Protection simultaneously
6 with the filing of an application for a certificate
7 of copyright registration or an application for
8 registration of another intellectual property
9 right under title 17, United States Code.

10 (2) DEFINITIONS.—In this subsection, the
11 terms “audiovisual works” and “sound recordings”
12 have the meanings given those terms in section 101
13 of title 17, United States Code.

14 **SEC. 225. IDENTIFICATION OF LOW-RISK IMPORTERS.**

15 (a) IN GENERAL.—The Commissioner shall develop
16 a voluntary certification program for importers that have
17 taken specific measures to strengthen and protect their
18 supply chains to prevent the infiltration into the inter-
19 national supply chain of counterfeit and pirated goods,
20 goods that are the subject to exclusion orders, and goods
21 that violate other forms of intellectual property rights.

22 (b) SELF-CERTIFICATION.—The voluntary certifi-
23 cation program developed under subsection (a) shall rely
24 primarily on self-certification by importers in determining
25 the eligibility of importers for the program.

1 (c) THIRD PARTY VERIFICATIONS.—The Commis-
 2 sioner shall identify any circumstances, such as importa-
 3 tion from any country with a history of being identified
 4 under section 182 of the Trade Act of 1974 (19 U.S.C.
 5 2242) as denying adequate and effective protection of in-
 6 tellectual property rights, under which third party
 7 verifications shall be required to determine the eligibility
 8 of importers for the voluntary certification program.

9 (d) BENEFITS.—An importer determined to be eligi-
 10 ble for the voluntary certification program and to have
 11 taken the measures required under subsection (a) may re-
 12 ceive benefits with respect to customs requirements, such
 13 as reduced inspections from U.S. Customs and Border
 14 Protection.

15 (e) DEFINITION.—In this section, the term “inter-
 16 national supply chain” has the meaning given that term
 17 in section 2 of the Security and Accountability for Every
 18 Port Act of 2006 (6 U.S.C. 901).

19 **SEC. 226. “WATCH LIST” DATABASE.**

20 (a) IN GENERAL.—The Secretary, acting through the
 21 Commissioner, shall develop and implement a database of
 22 importers, shippers, freight forwarders, and other partici-
 23 pants in the import, export, and transshipment process,
 24 whose activities the Commissioner determines merit spe-
 25 cial scrutiny at ports of entry because of the risk of impor-

1 tation, exportation, or transshipment of goods that violate
2 intellectual property rights or exclusion orders.

3 (b) PLAN.—The Secretary, acting through the Com-
4 missioner, shall develop a plan to implement the database
5 required under subsection (a). The plan shall—

6 (1) identify legitimate information sources to be
7 used in determining whether to place persons on the
8 database from—

9 (A) within U.S. Customs and Border Pro-
10 tection;

11 (B) other law enforcement sources; and

12 (C) the private sector;

13 (2) establish criteria under which the database
14 should be made available—

15 (A) to qualified officers of U.S. Customs
16 and Border Protection and other law enforce-
17 ment agencies;

18 (B) for intelligence purposes; and

19 (C) for use in identifying shipments for en-
20 hanced inspection;

21 (3) identify any regulatory or policy changes
22 that are necessary to make the database operational;

23 (4) contain any recommendations for statutory
24 changes to improve the effectiveness of the database;

1 (5) include an estimate of the resources nec-
 2 essary to implement and operate the database and to
 3 evaluate its effectiveness; and

4 (6) include a timetable for implementation of
 5 the database.

6 (c) CONSULTATIONS WITH ADVISORY COMMITTEE.—

7 The Commissioner shall consult with the Advisory Com-
 8 mittee on the development of criteria for the database.

9 (d) TIMING.—The Commissioner shall complete the
 10 plan required under subsection (b) in a timely fashion that
 11 will permit the inclusion of the plan in the first annual
 12 strategic plan required under section 212.

13 **SEC. 227. CIVIL FINES FOR IMPORTATION OF PIRATED OR**
 14 **COUNTERFEIT GOODS.**

15 (a) LIMITATION ON MITIGATION, DISMISSAL, AND
 16 VACATION OF FINES.—Unless otherwise ordered by a
 17 court of competent jurisdiction, any civil fine imposed pur-
 18 suant to section 526(f) of the Tariff Act of 1930 (19
 19 U.S.C. 1526(f))—

20 (1) may not be mitigated, except pursuant to
 21 regulations issued by the Commissioner; and

22 (2) may not be dismissed or vacated, except
 23 pursuant to regulations issued by the Commissioner
 24 that require the specific approval of the Commis-

1 sioner or the Commissioner's designee for such dis-
 2 missal or vacation.

3 (b) EXTRAORDINARY CASES.—In issuing regulations
 4 under subsection (a), the Commissioner shall ensure that
 5 the mitigation, dismissal, or vacation of civil fines for in-
 6 volvement in the importation, exportation, or trans-
 7 shipment of pirated or counterfeit goods is limited to ex-
 8 traordinary cases in which the interests of justice will
 9 clearly be served by such action.

10 **SEC. 228. REPORT ON EFFECTIVE COLLECTION TECH-**
 11 **NIQUES.**

12 (a) IN GENERAL.—The Commissioner shall submit to
 13 the Committee on Finance of the Senate and the Com-
 14 mittee on Ways and Means of the House of Representa-
 15 tives a report on—

16 (1) the extent to which U.S. Customs and Bor-
 17 der Protection uses effective collection techniques for
 18 collecting civil fines imposed on persons that import,
 19 export, or transship pirated or counterfeit goods;

20 (2) any recommendations with respect to im-
 21 proving the use of such techniques by U.S. Customs
 22 and Border Protection;

23 (3) any recommendations with respect to
 24 whether—

1 (A) owners of copyrights or trademarks
 2 should be authorized to pursue and collect fines
 3 imposed as a result of activities that violate
 4 such copyrights or trademarks; and

5 (B) such owners should be allowed to re-
 6 tain some or all of any funds so collected; and

7 (4) any other recommendations for statutory,
 8 regulatory, or policy changes not under the control
 9 of U.S. Customs and Border Protection to improve
 10 the agency's ability—

11 (A) to impose civil fines on persons that
 12 import, export, or transship pirated or counter-
 13 feit goods, at levels that would deter such im-
 14 portation, exportation, and transshipment; and

15 (B) to collect such fines.

16 (b) EFFECTIVE COLLECTION TECHNIQUES.—In this
 17 section, the term “effective collection techniques” in-
 18 cludes—

19 (1) confiscation of the proceeds of actions for
 20 which civil fines can be imposed;

21 (2) seizure of property acquired with such pro-
 22 ceeds;

23 (3) imposition of liens on the real or personal
 24 property of persons upon whom civil fines are im-
 25 posed;

1 (4) use of bonds to secure full payment of fines;

2 (5) in any case in which an entity is liable and
3 has no assets or is no longer in business, holding lia-
4 ble any person who—

5 (A) was an officer or director of the entity;

6 (B) in the case of a corporation, held at
7 least 5 percent (by vote or value) of the capital
8 structure of the corporation; or

9 (C) in the case of any other entity, held in-
10 terests representing at least 5 percent of the
11 capital structure of the entity; and

12 (6) engaging private sector entities to collect
13 civil fines imposed.

14 **Subtitle D—Training** 15 **Enhancements**

16 **SEC. 231. INTERNATIONAL TRAINING AND TECHNICAL AS-** 17 **SISTANCE ENHANCEMENTS.**

18 The Secretary shall take the necessary steps—

19 (1) to increase staffing and resources of offices
20 of U.S. Customs and Border Protection and U.S.
21 Immigration and Customs Enforcement engaged in
22 providing training and technical assistance to the
23 customs services and enforcement agencies of other
24 countries in order to improve the effectiveness of

1 such customs services and enforcement agencies with
2 respect to—

3 (A) detecting and intercepting the expor-
4 tation, importation, and transshipment of coun-
5 terfeit or pirated goods, goods that are the sub-
6 ject to exclusion orders, and goods that violate
7 other forms of intellectual property rights; and

8 (B) imposing penalties on persons that ex-
9 port, import, or transship counterfeit or pirated
10 goods at levels that will deter such exportation,
11 importation, and transshipment; and

12 (2) to ensure that the Director, in order to
13 make the most efficient and effective use of training
14 and technical assistance resources—

15 (A) coordinates the international training
16 and technical assistance activities of U.S. Cus-
17 toms and Border Protection and U.S. Immigra-
18 tion and Customs Enforcement as part of the
19 Director's coordination responsibilities under
20 section 211;

21 (B) gives priority to international training
22 and technical assistance activities in countries
23 in which such activities can be carried out most
24 effectively and with the greatest benefit to pro-

1 tecting the intellectual property rights of United
2 States persons;

3 (C) takes steps to minimize duplication,
4 overlap, or inconsistency of international train-
5 ing and technical assistance efforts; and

6 (D) coordinates such activities of the De-
7 partment of the Treasury with international
8 training and technical assistance activities
9 against counterfeiting and piracy carried out by
10 other agencies, and enhances the participation
11 of Department of the Treasury personnel in
12 interagency training and technical assistance
13 activities in this field.

14 **Subtitle E—New Legal Tools for** 15 **Border Enforcement**

16 **SEC. 241. EXPANDED PROHIBITIONS ON IMPORTATION, EX-** 17 **PORTATION, AND TRANSSHIPMENT OF COUN-** 18 **TERFEIT OR PIRATED GOODS.**

19 (a) IN GENERAL.—Section 526 of the Tariff Act of
20 1930 (19 U.S.C. 1526) is amended—

21 (1) in the section heading, by inserting “**OR**
22 **PROTECTED BY COPYRIGHT**” after “**TRADE-**
23 **MARK**”;

24 (2) in subsection (e), by striking “Any such
25 merchandise” and all that follows through “15

1 U.S.C. 1124),” and inserting “Any merchandise
 2 bearing a counterfeit mark (as defined in section
 3 2320(e) of title 18, United States Code) that is im-
 4 ported into the United States, exported out of the
 5 United States, or transshipped through the United
 6 States”; and

7 (3) in subsection (f)—

8 (A) by striking paragraph (1) and insert-
 9 ing the following:

10 “(1) Any person who engages in, directs, assists fi-
 11 nancially or otherwise, or aids and abets the importation,
 12 exportation, or transshipment of merchandise that is
 13 seized under subsection (e) of this section, or under regu-
 14 lations issued pursuant to section 603(c) of title 17,
 15 United States Code, shall be subject to a civil fine.”;

16 (B) by redesignating paragraph (4) as
 17 paragraph (5); and

18 (C) by inserting after paragraph (3) the
 19 following:

20 “(4) When the seizure of merchandise that results in
 21 the imposition of a civil fine is made under circumstances
 22 indicating that the importation, exportation, or trans-
 23 shipment of the merchandise was for the purpose of sale
 24 or public distribution of the merchandise, the maximum

1 fine amounts set forth in paragraphs (2) and (3) shall be
2 tripled.”.

3 (b) CONFORMING AMENDMENTS.—Title 17, United
4 States Code, is amended—

5 (1) in section 501(a), by inserting “, exports
6 copies or phonorecords from the United States, or
7 transships copies or phonorecords through the
8 United States” after “into the United States”;

9 (2) in section 506(c), by inserting
10 “, exports, or transships” after “imports”;

11 (3) in section 511(a), by inserting “, exporting,
12 or transshipping” after “importing”;

13 (4) in section 602—

14 (A) in the section heading, by striking “**or**
15 **exportation**” and inserting “, **expor-**
16 **tation, or transshipment**”; and

17 (B) in subsection (a)—

18 (i) in paragraph (2)—

19 (I) in the paragraph heading, by
20 striking “OR EXPORTATION” and in-
21 serting “, EXPORTATION, OR TRANS-
22 SHIPMENT”; and

23 (II) by striking “or exportation
24 from the United States” and inserting
25 “, exportation from the United States,

1 or transshipment through the United
 2 States”; and

3 (ii) in paragraph (3)—

4 (I) in subparagraph (A), by strik-
 5 ing “or exportation” and inserting “,
 6 exportation, or transshipment”; and

7 (II) in subparagraph (B), by
 8 striking “or exportation, for the pri-
 9 vate use of the importer or exporter”
 10 and inserting “, exportation, or trans-
 11 shipment, for the private use of the
 12 importer, exporter, or person trans-
 13 shipping copies or phonorecords”;

14 (5) in section 603—

15 (A) in the section heading, by striking
 16 “**Importation prohibitions**” and inserting
 17 “**Prohibitions on importation, export-**
 18 **tation, and transshipment**”;

19 (B) in subsection (a), by inserting
 20 “, exportation, and transshipment” after “im-
 21 portation”;

22 (C) in subsection (b), by inserting
 23 “, exportation, or transshipment” after “impor-
 24 tation” each place it appears; and

25 (D) in subsection (c)—

1 (i) by inserting “, exported, or trans-
 2 shipped” after “imported” each place it
 3 appears; and

4 (ii) by inserting “, exportation, or
 5 transshipped” after “importation”;

6 (6) by amending the chapter heading for chap-
 7 ter 6 to read as follows:

8 **“CHAPTER 6—MANUFACTURING REQUIRE-**
 9 **MENTS, IMPORTATION, EXPORTATION,**
 10 **AND TRANSSHIPMENT”;**

11 (7) in the table of sections for chapter 6, by
 12 amending the items relating to sections 602 and 603
 13 to read as follows:

“602. Infringing importation, exportation, and transshipment of copies or
 phonorecords.

“603. Prohibitions on importation, exportation, and transshipment: Enforcement
 and disposition of excluded articles.”;

14 and

15 (8) in the table of chapters, by amending the
 16 item relating to chapter 6 to read as follows:

“6. Manufacturing Requirements, Importation, Expor-
tation, and Transshipment 601”.

17 **SEC. 242. DECLARATIONS REGARDING COUNTERFEIT AND**
 18 **INFRINGING MERCHANDISE.**

19 (a) DECLARATIONS.—Section 485(a) of the Tariff
 20 Act of 1930 (19 U.S.C. 1485(a)) is amended—

21 (1) in paragraph (1), by striking “Whether”
 22 and inserting “whether”;

1 (2) in paragraph (2), by striking “That” and
2 inserting “that”;

3 (3) in paragraph (3)—

4 (A) by striking “That” and inserting
5 “that”; and

6 (B) by striking “and” after the semicolon;

7 (4) in paragraph (4)—

8 (A) by striking “That” and inserting
9 “that”; and

10 (B) by striking the period and inserting a
11 semicolon; and

12 (5) by adding at the end the following:

13 “(5) that the merchandise being imported does
14 not bear a counterfeit mark (as defined in section
15 2320(e) of title 18, United States Code);

16 “(6) that the merchandise is not an infringing
17 copy or phonorecord or one whose making would
18 have constituted an infringement of copyright if title
19 17, United States Code, had applied; and

20 “(7) that the merchandise—

21 “(A) does not violate an exclusion order of
22 the United States International Trade Commis-
23 sion under section 337 (d) or (e) by reason of
24 any of subparagraphs (B) through (E) of sub-
25 section (a)(1) of section 337; or

1 “(B) infringe any other intellectual prop-
 2 erty right not covered by subparagraph (A) or
 3 by paragraph (5) or (6).”.

4 (b) REGULATIONS.—The Secretary shall issue regula-
 5 tions requiring that the declarations required by para-
 6 graphs (5), (6), and (7) of section 485(a) of the Tariff
 7 Act of 1930, as added by subsection (a) of this section,
 8 be made by all persons arriving in the United States with
 9 respect to articles carried on their person or contained in
 10 their baggage.

11 **SEC. 243. SEIZURE AND FORFEITURE OF DEVICES DE-**
 12 **SIGNED TO CIRCUMVENT INTELLECTUAL**
 13 **PROPERTY RIGHTS PROTECTIONS.**

14 Section 596(c)(2) of the Tariff Act of 1930 (19
 15 U.S.C. 1595a(c)(2)) is amended—

- 16 (1) in subparagraph (E), by striking “or”;
 17 (2) in subparagraph (F), by striking the period
 18 and inserting “; or”; and
 19 (3) by adding at the end the following:

20 “(G) it is a technology, product, service,
 21 device, component, or part thereof the importa-
 22 tion of which is prohibited under section
 23 1201(a)(2) of title 17, United States Code.”.

1 **SEC. 244. AUTHORITY OF CHIEF COUNSEL OF U.S. CUSTOMS**
2 **AND BORDER PROTECTION TO REPRESENT**
3 **THE UNITED STATES IN CERTAIN FOR-**
4 **FEITURE PROCEEDINGS.**

5 Title V of the Tariff Act of 1930 (19 U.S.C. 1500
6 et seq.) is amended by inserting after section 529 the fol-
7 lowing:

8 **“SEC. 530. AUTHORITY OF CHIEF COUNSEL OF U.S. CUS-**
9 **TOMS AND BORDER PROTECTION TO REP-**
10 **RESENT THE UNITED STATES IN CERTAIN**
11 **FORFEITURE PROCEEDINGS.**

12 “(a) IN GENERAL.—Subject to subsection (b), the
13 Chief Counsel of U.S. Customs and Border Protection
14 may commence, defend, or intervene in, and supervise the
15 litigation of, any civil forfeiture proceeding under section
16 2320(b) of title 18, United States Code, or section 526(e)
17 of this Act.

18 “(b) PROCEDURE FOR EXERCISE OF AUTHORITY TO
19 LITIGATE OR APPEAL.—

20 “(1) IN GENERAL.—Prior to commencing, de-
21 fending, or intervening in any civil forfeiture pro-
22 ceeding referred to in subsection (a), the Chief
23 Counsel shall submit a written notification to the At-
24 torney General with respect to the proposed pro-
25 ceeding.

1 “(2) FAILURE TO RESPOND.—If, not later than
 2 120 days after the date on which the Chief Counsel
 3 submits the notification to the Attorney General
 4 under paragraph (1), the Attorney General has
 5 failed to commence, defend, or intervene in the pro-
 6 posed proceeding, the Chief Counsel may commence,
 7 defend, or intervene in, and supervise the litigation
 8 of, the proceeding and any appeal of the proceeding
 9 in the name of the Chief Counsel.

10 “(3) AUTHORITY OF ATTORNEY GENERAL TO
 11 INTERVENE.—Nothing in this subsection precludes
 12 the Attorney General from intervening on behalf of
 13 the United States in any civil forfeiture proceeding
 14 under section 2320(b) of title 18, United States
 15 Code, or in any appeal of such a proceeding, as may
 16 be otherwise provided by law.”.

17 **Subtitle F—Administrative** 18 **Provisions**

19 **SEC. 251. ADVISORY COMMITTEE ON IMPORT SAFETY AND** 20 **INTELLECTUAL PROPERTY ENFORCEMENT.**

21 (a) ESTABLISHMENT.—

22 (1) IN GENERAL.—The Secretary, acting
 23 through the Commissioner and the Assistant Sec-
 24 retary for U.S. Immigration and Customs Enforce-
 25 ment, shall establish an advisory committee which

1 shall be known as the Advisory Committee on Im-
2 port Safety and Intellectual Property Rights En-
3 forcement (in this section referred to as the “Advi-
4 sory Committee”).

5 (2) MEMBERSHIP.—The Advisory Committee
6 shall consist of 20 members appointed by the Sec-
7 retary. In making appointments to the Advisory
8 Committee, the Secretary shall ensure that—

9 (A) the membership of the Advisory Com-
10 mittee is representative of the individuals and
11 organizations affected by the enforcement of
12 import safety standards and intellectual prop-
13 erty rights by U.S. Customs and Border Pro-
14 tection and U.S. Immigration and Customs En-
15 forcement;

16 (B) at least one member of the Advisory
17 Committee is a representative of organized
18 labor;

19 (C) at least one member of the Advisory
20 Committee is a representative of consumer
21 groups; and

22 (D) not more than 10 members of the Ad-
23 visory Committee belong to the same political
24 party.

25 (b) DUTIES.—The Advisory Committee shall—

1 (1) provide advice to the Secretary, the Com-
2 missioner, and the Assistant Secretary for U.S. Im-
3 migration and Customs Enforcement on all matters
4 involving the enforcement of import safety standards
5 and intellectual property rights by U.S. Customs
6 and Border Protection and U.S. Immigration and
7 Customs Enforcement; and

8 (2) submit an annual report to the Committee
9 on Finance of the Senate and the Committee on
10 Ways and Means of the House of Representatives
11 that shall—

12 (A) describe the operations of the Advisory
13 Committee during the preceding year; and

14 (B) set forth any recommendations of the
15 Advisory Committee with respect the enforce-
16 ment of import safety standards and intellec-
17 tual property rights by U.S. Customs and Bor-
18 der Protection and U.S. Immigration and Cus-
19 toms Enforcement.

20 (c) PRESIDING OFFICERS.—The Commissioner and
21 the Assistant Secretary for U.S. Immigration and Cus-
22 toms Enforcement shall jointly preside over meetings of
23 the Advisory Committee.

1 **SEC. 252. STAFFING ENHANCEMENTS AT U.S. CUSTOMS AND**
2 **BORDER PROTECTION.**

3 There are authorized to be appropriated to U.S. Cus-
4 toms and Border Protection such funds as may be nec-
5 essary for additional personnel (as determined in accord-
6 ance with the Resource Allocation Model established pur-
7 suant to section 301(h) of the Customs Procedural Reform
8 and Simplification Act of 1978 (19 U.S.C. 2075(h)) to
9 carry out the additional responsibilities of U.S. Customs
10 and Border Protection under this title regarding the im-
11 portation, transshipment, and exportation of counterfeit
12 or pirated goods, goods that are the subject to exclusion
13 orders, and goods that violate other forms of intellectual
14 property rights.

15 **SEC. 253. STAFFING ENHANCEMENTS AT U.S. IMMIGRATION**
16 **AND CUSTOMS ENFORCEMENT.**

17 There are authorized to be appropriated to U.S. Im-
18 migration and Customs Enforcement such funds as may
19 be necessary for additional personnel to carry out the ad-
20 ditional responsibilities of U.S. Immigration and Customs
21 Enforcement under this title regarding the enforcement
22 of intellectual property rights, including for developing
23 and implementing a training program with respect to the
24 enforcement of intellectual property rights for each U.S.
25 Immigration and Customs Enforcement attaché office out-
26 side the United States.

1 **SEC. 254. REGULATORY AUTHORITY.**

2 The Secretary may issue such regulations as are nec-
3 essary to carry out this title.

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